

**BEFORE THE STATE BOARD OF MEDIATION  
STATE OF MISSOURI**

TEAMSTERS, LOCAL 245,	)	
	)	
Petitioner,	)	
	)	
v.	)	Public Case No. R 94-017
	)	
LAWRENCE COUNTY NURSING HOME	)	
DISTRICT,	)	
	)	
Respondent.	)	

**JURISDICTIONAL STATEMENT**

The State Board of Mediation is authorized to hear and decide issues concerning appropriate bargaining units by virtue of Section 105.525 RSMo 1986. This case appears before the State Board of Mediation upon the filing by Teamsters, Local 245 of a petition for certification as public employee representative for certain employees of the Lawrence County Nursing Home District. A hearing was held on March 30, 1994 in Mt. Vernon, Missouri, at which representatives of the Union and the Employer were present. The case was heard by State Board of Mediation Chairman Francis R. Brady, Employer Member Pamela S. Wright and Employee Member Joel Rosenblit. After the hearing, Wright's term on the Board expired and she was subsequently replaced by Linda Cooper. The record was then submitted to employer member Cooper.

At the hearing the parties were given full opportunity to present evidence and testimony. Afterwards, briefs were filed. Having considered the evidence and the briefs, the Board sets forth the following Findings of Fact, Conclusions of Law and Direction of Election.

**FINDINGS OF FACT**

The Employer, Lawrence County Nursing Home District, operates the Lawrence County Nursing Home and the Lawrence County Residential Care Center. Both are

located in Mt. Vernon, Missouri. The Nursing Home is a 120 bed intermediate care skilled nursing facility that primarily services the elderly. The Residential Care Center is a 24 bed independent living facility that provides supervision of medication, meals and related activities for its residents. As the name implies, it is a residential care facility. Both the Nursing Home and the adjacent Residential Care Center operate "around-the-clock", seven (7) days a week, twenty-four (24) hours a day.

At the time of the hearing, the District employed 81 employees to provide services to its residents. The majority of those employees (about 46) work in the Employer's nursing department, the department involved here.

The Employers' Administrator is Max Springer. He has overall responsibility for both facilities and supervises all operations, including the nursing department. The nursing department is headed by a Director of Nursing. Shortly before the hearing herein, the Director of Nursing (Nancy Hitchcock) resigned. Her replacement was Betty Gordon, formerly the Employer's Registered Nurse Certified Nurse Assistant Instructor. Gordon assumed her new position the week of the hearing and did not testify at same. The Director of Nursing is responsible for the day-to-day operation of the nursing department and supervises all the employees therein. By law, the director of the department has to be a registered nurse (hereinafter RN). Underneath the Director is the Assistant Director of Nursing. Linda Gideon, a Licensed Practical Nurse (hereinafter LPN), currently fills that position. The Assistant Director of Nursing is also involved in the day-to-day operation of the nursing department and also oversees all the department's employees. Underneath her is the Registered Nurse Certified Nurse Assistant Instructor. This position was vacant as of the time of the hearing because the former incumbent (Betty Gordon) had just become Director of Nursing. Nothing in the record indicates that this position will not be refilled. Underneath this position in the nursing department are three RNs. Underneath them are the LPNs. The Employer is required by law to employ LPNs. At the time of the hearing there were seven (7)

full-time LPNs, one (1) part-time LPN, two (2) on call LPNs, and one (1) Graduate Practical Nurse. The Graduate Practical Nurse had passed all the requirements to become an LPN but was awaiting her certification test results as of the time of the hearing. All subsequent references herein to LPNs will include the full-time, part-time and on call LPNs and the Graduate Practical Nurse. The LPNs cannot step up to the duties of an RN. Underneath the LPNs in the nursing department's organizational structure are the Certified Medication Technicians (hereinafter referred to as CMTs). A CMT can temporarily step up to an LPN job if there is another LPN on duty. Underneath the CMTs in the nursing department's organizational structure are the Certified Nursing Assistants (hereinafter referred to as CNAs). At the time of the hearing there were 28 total CMTs and CNAs.

All of the employees referenced above except the LPNs, CMTs and CNAs work during the day Monday through Friday, are off on weekends and can be consulted during the evening hours by those on duty. The LPNs, CMTs and CNAs work one of three shifts: 7:00 a.m. to 3:00 p.m. (the day shift), 3:00 p.m. to 11:00 p.m. (the evening shift); or 11:00 p.m. to 7:00 a.m. (the night shift). Thus, LPNs, CMTs and CNAs all work the same schedules. RNs work different schedules from these employees, but they (the RNs) are on duty or on call at all times. By law, the Employer has to have an RN on duty eight (8) hours per day, seven (7) days a week. Additionally, by law, the Employer has to have an RN on call twenty-four (24) hours a day. During the day, the RNs oversee the LPNs. The LPNs, in turn, oversee the CMTs and CNAs on all three shifts.

The LPNs are also known as charge nurses. The charge nurses only work at the Home; they do not work at the Residential Care Center. At the Home one LPN charge nurse is assigned to each nursing unit for every shift. There are two nursing units in the Home so there are usually two charge nurses on duty on each shift. The charge nurses primarily work in and around central nursing stations which are located at the center cross-sections of the nursing wings. Each charge nurse is responsible for

managing their unit. When a charge nurse is absent, a CMT functions as a team leader for that side. When this happens, the charge nurse is responsible for managing not only his or her assigned side, but also the other side of the facility where the CMT is acting as team leader. The charge nurses are the highest ranking employees present at the Home on the evening and night shifts. During that time, they are responsible for the entire facility (including the Residential Care Center). During these two shifts, no other employee at the facility has similar authority. However, other employees at the facility work in the evenings and on weekends without supervisors being present (namely food service, housekeeping and laundry employees).

The charge nurses are responsible for all patient care provided to residents on their particular unit. They ensure that all residents are treated properly and that their needs are met. If a nursing unit is cited by the Employer's in-house quality assurance committee with a deficiency in the quality of care provided to residents, the charge nurse for that unit is responsible for correcting the problem. The charge nurses direct the CNAs and CMT on their unit (typically several CNAs and one CMT) who, in turn, provide the direct patient care to the residents of bathing, dressing, feeding and tending to their personal needs. The CNAs and CMTs spend all their time performing direct patient care. The charge nurses also perform direct patient care, but the percentage of time they spend doing so varies from shift to shift and individual to individual. For example, Cathy Yates spends about 25-30% of her time on the evening shift doing direct patient care while Cyndi Stines spends about 70% of her time on the day shift doing direct patient care. The charge nurses, CMTs and CNAs are supposed to work together as a team to provide patient care. In addition to performing direct patient care, charge nurses also perform substantial patient related paperwork such as doing day-to-day charting on individual residents and nursing summaries that indicate what has happened to a resident over the course of time. If a resident is involved in any kind of incident, the charge nurse fills out an incident report form. The charge nurses spend the remainder

of their working time overseeing the work of the CMTs and CNAs to ensure that they perform their duties correctly.

Although charge nurses assign CNAs to a unit of residential rooms at the start of each shift and make work assignments to the CNAs and CMTs, the daily shift routines are preestablished for each of the three (3) shifts in the nursing department. These shift routines are posted in big frames on the wall in the nursing area. The CNAs and CMTs follow these established routines in performing their day-to-day job duties of patient care. Each patient at the Home has a care plan that is established by an RN in consultation with the treating physician. Neither the LPN charge nurses, the CNAs nor CMTs can vary a patient's care plan.

When a non-routine matter arises, the LPN charge nurses consult a procedure book. By in large, the procedure contained therein repeats the statutory requirements for patient care. This procedure book specifies how charge nurses are to handle virtually every situation that could arise concerning both patient care and non-patient care matters. The charge nurses are to follow the procedure contained in this book to the letter. Additionally, when non-routine situations arise, the charge nurses contact the on duty or on call RN for instructions.

The Director of Nursing or the Assistant Director of Nursing schedules all nursing department personnel. The Employer is legally required to maintain a certain number of nursing staff employees on each shift and the charge nurses ensure that this staffing level is maintained. When a shift is short-staffed due to "no-shows", it is the charge nurse's responsibility to fill the vacant position. If the vacancy occurs on the day shift, the charge nurse assigns the remaining employees in the nursing unit to cover the vacancy. If the vacancy occurs on the evening or night shift, or on weekends, the charge nurse calls in a staff member from the nursing department's call-in list to fill the vacancy. On occasion, vacancies on the evening or night shifts are filled by employees working overtime. When this happens, the Director of Nursing or Assistant Director of

Nursing approves the overtime; not the charge nurses. On special occasions if no in-house replacements are available, charge nurses call a temporary "rent-a-nurse" service for a replacement. When this happens, the Director of Nursing or Assistant Director of Nursing approves it beforehand. In 1992, Administrator Springer issued a memo to the charge nurses (among others) instructing them not to contact temporary employee services without prior authorization from himself, the Director of Nursing or the Assistant Director of Nursing. While the Employer contends this memo is no longer in effect, it was still posted as of the time of the hearing herein. Charge nurses are responsible for scheduling staff breaks and meal periods for the CNAs and CMTs that they oversee. When they do so, the charge nurses ensure that their unit is still staffed in accordance with state requirements. If a CNA or CMT gets sick or needs to leave during the middle of his/her shift, the charge nurse must get approval from the RN to allow the employee to leave.

The Employer conducts in-service meetings for the staff. These in-service meetings, which are required by State law, provide training to staff. Three of the charge nurses train the nursing assistants and other nursing department employees at these in-service sessions regarding patient care. The training that employees receive assist them in becoming State certified.

There are daily departmental head meetings at the Home. Charge nurses do not attend these meetings.

The Director and Assistant Director of Nursing evaluate the charge nurses who, in turn, evaluate the remaining employees in the nursing department (i.e. the CNAs and CMTs). The evaluation form which the charge nurses complete lists the following categories: knowledge; accuracy; judgment; innovation; appearance and habits; orderliness; courtesy; cooperation; initiative; reliability; perseverance; stability; attendance; and alertness. In each category, the charge nurse ranks the employee's performance using a numerical scale ranging from "0" for "unsatisfactory" to a "4" for

"clearly outstanding" performance. The numerical ratings that employees receive on these evaluations are tallied into a point total. This point total is used to justify awarding, or withholding, pay increases for employees. This year, employees who scored 26 or below received no annual pay raise, employees who scored 26-40 received a one and one-half percent (1.5%) raise and employees who scored above 41 received a three percent (3%) raise. This percentage figure was determined by the Administrator--not by the charge nurses. The charge nurses also make comments on the evaluation form concerning the employee's strengths or weaknesses. These evaluation forms are completed when employees finish their probationary period and on their anniversary date. If the employee is a probationary employee, the charge nurse recommends whether the person should be retained as an employee. Insofar as the record shows, no charge nurse has ever indicated that a probationary employee should not be retained. If the probationary employee successfully completes probation, he or she receives a standard ten-cent pay raise. This ten-cent pay raise is given by the Administrator--not by the charge nurses. The charge nurses sometime discuss evaluations with the Director of Nursing before completing them. On occasion, the Director of Nursing has told charge nurses what score to give an employee in a particular category and what problem areas to comment on. The completed evaluations are subject to review and approval by the Director of Nursing and the Administrator. Both can modify completed evaluations, but the record does not contain any instances where this has happened.

Charge nurses do not have the authority to hire, promote, transfer or layoff employees. With regard to hiring, charge nurses may suggest names for openings, like other employees can, but they neither interview candidates nor decide whether to hire a particular candidate. With regard to promotions, charge nurses cannot promote, per se. Promotions are possible only when an employee attains additional education, increased training or State certification. With regard to transfers, any transfer would be approved

by the Director or Assistant Director of Nursing--not a charge nurse. With regard to layoffs, there have never been any layoffs at the Home. Thus, the role of the charge nurse in determining who would be laid off has never been addressed.

Charge nurses are not empowered to discharge or suspend employees and have not done so. This responsibility rests with the Administrator. In the one instance referenced in the record where an employee was sent home during their shift for misconduct, it was the Administrator that decided to take this action. Charge nurses are empowered though to issue verbal and written warnings and have done so. When the charge nurse gives an employee a verbal warning, they complete a form entitled "Employee Counseling Report" that memorializes the incident. This written record of the verbal counseling is kept in the employee's personnel file, but does not subsequently count toward suspension or discharge. Charge nurses do not have to check with the Director of Nursing before giving verbal warnings. When a charge nurse gives an employee a written warning they complete a form entitled "Employee Disciplinary Report" that memorializes the incident. This completed form is also kept in the employee's personnel file and is subsequently considered in taking future disciplinary action against the employee. In theory, charge nurses are not required to check with the Director of Nursing before writing up an "Employee Disciplinary Report". In practice, charge nurses discuss the matter with the Director of Nursing or the Assistant Director of Nursing before doing so and they decide whether a write-up is warranted. On two occasions where a charge nurse wrote up written warnings without checking first with the Director of Nursing, the write-ups were revoked.

When a nursing department employee is involved in any kind of incident or accident, the employee fills out an "Incident/Accident Report" explaining what happened. The charge nurse signs the report. Afterwards, the charge nurse completes a "Supervisor's Accident Report" regarding the incident and recommends what steps



could be taken to prevent similar occurrences. These accident reports are completed on a routine basis.

If nursing department employees have questions about fringe benefit matters such as leaves, they consult with the Director of Nursing or Assistant Director of Nursing regarding same; not their charge nurse.

Except for the Director of Nursing, all nursing department employees are paid on an hourly basis. The starting rate for a CNA is \$4.90 per hour. The starting rate for a CMT is \$5.30 per hour. The starting rate for an LPN charge nurse is \$7.75 per hour. The starting rate for an RN is \$12.00 per hour.

### **CONCLUSIONS OF LAW**

Teamsters Local 245 petitioned to be certified as public employee representative for the following bargaining unit:

All full-time and regular part-time employees of the Lawrence County Nursing Home including LPNs, RNs, Med Techs, maintenance, certified, dietary, housekeeping, laundry and all other such employees, excluding department heads, supervisors, office clericals and guards.

The Employer worded the proposed bargaining unit differently. It proposes the following bargaining unit description.

**INCLUDED:** All full-time, regular part-time, and on call, hourly paid Cooks, Food Service Assistants, Housekeepers, Custodians, Laundry Assistants, Personal Laundry Assistant, Maintenance Worker, Beautician/Barber, Certified Nurse Assistants, Non-Certified Nurse Assistants, Certified Medical Technicians, Ward Clerk, and Restorative Certified Nurse Assistants employed by the Lawrence County Nursing Home District at the Lawrence County Nursing Home and the Lawrence County Residential Care Center located on Carl Allen Drive, in Mt. Vernon, Missouri 65712, during the payroll period ending March 26, 1994.

**EXCLUDED:** Administrator, Business Office Manager/Assistant Administrator, Administration Secretary/Receptionist, Social Services Designee, Assistant Social Services Designee, Food Service Supervisor, Housekeeping Supervisor, Laundry Supervisor, Maintenance Supervisor,

Director of Nursing, Assistant Director of Nursing, Registered Nurse Certified Nurse Assistant Instructor, Registered Nurse Charge Nurses, Licensed Practical Nurse Charge Nurses, Graduate Practical Nurse Charge Nurse, Medical Records Technician, Restorative Nursing Supervisor, Restorative Activities Supervisor, Residential Care Center Restorative Activities Coordinator, other managers, supervisors, office clerical, professional, and technical employees, watchmen and guards, and all other employees.

Since the Employer's proposed bargaining unit description is substantially longer and more detailed than the Union's, it would appear that the parties dispute the overall composition of the proposed bargaining unit. However, they do not. The parties agreed at the hearing that the only issue herein is the status of the LPNs and the Graduate Practical Nurse (who collectively are known as charge nurses) and whether they are included in or excluded from the unit.

The Union's proposed bargaining unit description can be characterized as generic, while the Employer's proposed bargaining unit description is obviously more detailed. While this Board has utilized generic bargaining unit descriptions in the past, and will continue to do so where appropriate in the future, we think a more detailed description is warranted here due to the size of the proposed bargaining unit and the fact that the parties entered into certain stipulations at the hearing concerning the composition of the bargaining unit. For example, they agreed to exclude the RNs, a classification which was originally listed by the Union as an inclusion. Additionally, they agreed to exclude certain classifications that are not explicitly referenced on the Union's proposed bargaining unit description, namely the Assistant Social Services Designee, the Housekeeping Supervisor, the Laundry Supervisor and the Residential Care Center Restorative Activities Coordinator. Given the foregoing, we have decided to adopt the bargaining unit description proposed by the Employer with the following modifications. First and foremost, we obviously have to decide whether the LPNs and Graduate

Practical Nurse are included in, or excluded from, the bargaining unit. If we decide they are included in the bargaining unit, we will place them in the list of inclusions. Conversely, if we decide they are excluded from the bargaining unit, we will place them in the exclusions. Second, we have deleted the following phrase from the inclusion paragraph: "located on Carl Allen Drive in Mt. Vernon, Missouri 65712, during the payroll period ending March 26, 1994." Such language is not typically included in a bargaining unit description.

As noted above, the parties agree that the sole issue here is whether the ten (10) LPNs and one Graduate Practical Nurse who collectively are known as charge nurses should be included in the bargaining unit. The Employer contends they should be excluded because of their supervisory status while the Union disputes this assertion. The parties stipulated that for purposes of this decision, all the charge nurses could be treated as a group (i.e. that their job duties are essentially identical).

The Missouri Public Sector Labor Law gives certain employees the right to form and join labor organizations and to present proposals to their employers relative to conditions of employment. Although supervisors are not specifically excluded from the law's coverage, case law from this Board and the courts have carved out such an exclusion. See Golden Valley Memorial Hospital v. Missouri State Board of Mediation, 559 S.W.2d (Mo.App. 1977) and St. Louis Fire Fighters Association, Local 73 v. City of St. Louis, Missouri, Case No. 76-013 (SBM 1976). This exclusion means that supervisors cannot be included in the same bargaining unit as the employees they supervise. Since the Employer contends that the charge nurses here are supervisors, it is necessary for us to determine if such is, in fact, the case. In making this decision, we will consider the following factors:

- (1) The authority to effectively recommend the hiring, promotion, transfer, discipline, or discharge of employees.

- (2) The authority to direct and assign the work force, including a consideration of the amount of independent judgment and discretion exercised in such matters.
- (3) The number of employees supervised, and the number of actual persons exercising greater, similar or lesser authority over the same employees.
- (4) The level of pay including an evaluation of whether the person is paid for a skill or for supervision of employees.
- (5) Whether the person is primarily supervising an activity or primarily supervising employees.
- (6) Whether the person is a working supervisor or whether they spend a substantial majority of their time supervising employees.

Not all of these criteria need to be present for a position to be found supervisory. Rather, in each case the inquiry is whether these criteria are present in sufficient combination and degree to warrant the conclusion that the position is supervisory.

Although it is a close call, we conclude that the charge nurses here are not supervisors. In the analysis that follows we will first apply the above-noted criteria. We will then compare the facts that exist here to those that existed in Monroe Manor.<sup>1</sup> Attention is focused initially on factor (1). It is undisputed that charge nurses do not hire, fire, promote or transfer employees. All these tasks are handled by others in management.

That said, the charge nurses do exercise some responsibilities over the remaining matters listed or inferred in factor (1), namely disciplining and evaluating employees. With respect to discipline, charge nurses have issued verbal and written warnings. They can issue verbal warnings, which they document in writing, without clearing it in advance with anyone else in management. Before they issue a written warning though, they usually clear it in advance with the Director of Nursing or the

---

<sup>1</sup> Case No. R 91-016 (SBM 1991).

Assistant Director of Nursing. On two occasions where charge nurses wrote up employees without advance approval, the write ups were revoked by the Director of Nursing. No charge nurse has ever suspended an employee or sent an employee home without prior approval.

With respect to evaluations, charge nurses annually evaluate CNAs and CMTs. They also evaluate the CNAs and CMTs coming off probation. In doing so, they rate the employees in a variety of areas by assigning them a numerical score. The charge nurses sometime discuss the evaluations with the Director of Nursing before doing them. On occasion, the Director of Nursing has told charge nurses what score to give an employee in a particular category and what problem area to comment on. Thus, while the charge nurses evaluate employees, they are sometimes given direction by the Director of Nursing concerning how to complete the evaluation. After an evaluation is completed, the point total generated on the evaluation is used to justify awarding, or withholding, pay increases for employees. However, the charge nurses do not determine what the pay increase will be, nor do they actually award the money; this is done by the Administrator. Even the ten-cent increase which new employees get for going off probation is given by the Administrator--not the charge nurses. When a charge nurse evaluates an employee coming off probation, the charge nurse recommends on the form whether the employee should be retained. In theory, this means a charge nurse can recommend that a probationary employee not be retained. In practice though, no charge nurse has ever recommended that a probationary employee not be retained.

The focus now turns to factor (2), the authority to direct and assign the work force. It is noted at the outset that the charge nurses try to work as a team with the CNAs and CMTs in providing patient care. The charge nurses spend a substantial

portion of their time performing the same hands on patient care as the CNAs and CMTs perform. That said, there is no question that the charge nurses are in charge of the CNAs and CMTs. The charge nurses direct these employees on a day-to-day basis in the performance of their patient care activities. They monitor and oversee the work of these employees and ensure that they perform it correctly. While charge nurses can assign these employees to a specific unit of resident rooms and to various job tasks, the CNAs and CMTs generally know what to do without direction. There is a shift routine established for all these employees and they follow it daily.

Charge nurses ensure that a specific staffing level is maintained at the facility. When a shift is short staffed, they call someone from the nursing department's call in list to fill the vacancy. Vacancies are also filled by employees working overtime, but the charge nurses neither assign nor approve the overtime. If no in-house replacements are available, the charge nurses call a temporary "rent-a-nurse" service for a replacement. However, charge nurses do not do so on their own volition.

During a significant portion of each workweek (most of the second shift and the third shift), charge nurses are the highest ranking personnel at the facility. During that time they are officially in charge of the facility and responsible for handling whatever situations arise. Some of the situations that arise involve the care and treatment of patients. When something non-routine happens involving a patient, the charge nurses consult a procedure book that identifies how to handle most situations that arise. In addition, the charge nurses can contact the RN who is either on duty or on call. The charge nurses routinely contact the RNs whenever there are questions concerning patient care. Other situations that arise involve the direction of employees themselves. Here, too, the charge nurses contact the on duty or on call RN.

The foregoing persuades us that the oversight function which the charge nurses perform is not supervisory, but rather in the nature of a lead person. For example, CNAs and CMTs do not contact charge nurses with respect to items such as time off, holiday or vacation pay and vacation days; all those items are handled by others in management. Additionally, charge nurses do not grant time off, assign or approve overtime or call in employees on their own volition.

Next, with regard to factor (3), the following is noteworthy concerning the number of persons exercising authority over the CNAs and CMTs. The parties stipulated that the Administrator, the Director of Nursing, the Assistant Director of Nursing, the Registered Nurse Certified Nurse Assistant Instructor and the three (3) RNs are supervisors. All these employees, with the exception of the Administrator, work exclusively in the nursing department. The Administrator testified he is actively involved in supervising the nursing department (which is the Employer's biggest department). This means there are seven (7) employees on various levels with supervisory authority over the nursing department. If the eleven (11) LPNs were supervisors, there would be 18 supervisors in the nursing department supervising approximately 30 CNAs and CMTs. In our view, this level of more than one supervisor for every two (2) employees is inordinately high. With the charge nurses in the bargaining unit though, there are still seven (7) supervisors supervising about 40 employees in the nursing department, a ratio of one (1) supervisor for each six (6) employees. In our view, this is more consistent with accepted supervisor to employee ratios.

With respect to the level of pay (factor 4), it is noted that charge nurses earn about \$2.50 per hour more than the CNAs and CMTs. The RNs, in turn, earn about \$4.00 per hour more than the LPNs. By in large, these wage rates reflect differences in education, training, and State certification and licensing.

Attention is now turned to factor (5) above, whether the person is supervising an activity or employees. As previously noted, the charge nurses oversee the bathing, dressing and feeding of patients by the CNAs and CMTs. This involves supervising an activity, namely patient care. Charge nurses do not supervise the CNAs and CMTs in the traditional labor relations sense because they have limited input into their wages and no input whatsoever on fringe benefits and time off. These matters are handled by others in management.

The final factor, (6), is whether the person spends most of his/her time working or supervising employees. While a substantial variation exist between charge nurses concerning the time spent doing direct patient care, patient related paperwork, and overseeing the patient care work performed by others, we are persuaded they spend most of their time performing patient care and patient related paperwork. That being so, their main job is to supervise the activity of patient care--not to supervise the CNAs and CMTs for labor relations purposes.

Having applied the aforementioned criteria, attention is now turned to the decision which both sides cite to support their position here. In Monroe Manor<sup>2</sup>, we found that the LPN charge nurses functioned as supervisors. While the outcome here is opposite that in Monroe Manor, the reason is because the facts differ in a number of respects. To begin with, in Monroe Manor, there were no intermediate supervisors between the Director of Nursing and the LPNs; the LPNs were directly underneath the Director of Nursing in the employer's chain of command. Here, though, there are several other levels of supervision that exist between the Director of Nursing and the LPNs, to wit: there is an Assistant Director of Nursing; there is a Registered Nurse

---

<sup>2</sup> Ibid.



Certified Nurse Assistant Instructor; and there are three (3) RNs. Thus, there are three (3) levels of supervision in the nursing department between the LPNs and the Director of Nursing. Additionally, in Monroe Manor there was no requirement that RNs be on duty or on call for any set number of hours of the day. Here, though, RNs are on duty or on call at all times. They are therefore either present in person or available by phone to handle whatever problems arise. As a result, they provide a level of supervision above the LPNs that simply did not exist at Monroe Manor. Finally, in Monroe Manor the LPNs suspended employees, gave written warnings without prior approval, transferred employees, granted time off, approved voluntary overtime and assigned involuntary overtime and made out work schedules. Here, though, the LPNs do none of those duties. That being so, the charge nurses at Monroe Manor had more responsibility and more authority than the charge nurses here. Given the foregoing, we believe that our holding in Monroe Manor is distinguishable from the instant one based on the facts.

Finally, we have decided to comment on a recent U.S. Supreme Court decision which was cited by the employer, NLRB v. Health Care and Retirement Corporation of America<sup>3</sup> As background to our discussion, it is noted that the National Labor Relations Act (hereinafter NLRA) grants employees the right to organize and to engage in collective bargaining free from employer interference. The NLRA does not grant those rights to supervisory employees though. The NLRA defines a supervisor in Section 2 (11) as:

Any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection

---

<sup>3</sup> 146 LRRM 2321 (5/23/94).

with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

This statutory definition is obviously essential in determining which employees are covered by the NLRA. In Health Care the court found that the nurses involved therein were supervisors and thus were not covered by the NLRA. In so finding, the court held that the National Labor Relations Board's test for determining whether nurses are supervisors was not consistent with the statutory definition, specifically the statutory phrase "in the interest of the employer."

That said, we now turn to the question of that decision's applicability here. As previously noted, the term "supervisor" is not defined in the Missouri Public Sector Labor Law which this Board administers. Additionally, this Board has not adopted the NLRA's definition. Instead, we apply the six factors previously noted. None of the six factors we apply contain the phrase "in the interest of the employer." Since the decision in Health Care turned "upon the proper interpretation of the statutory phrase 'in the interest of the employer'"<sup>4</sup> and that phrase is not contained in the Missouri law, it follows that the court's decision in Health Care is distinguishable on that basis alone.

To summarize then, the record indicates that the charge nurses here are skilled employees who perform, incidentally to their work, a number of supervisory functions. Specifically, they are in charge of the facility on the second and third shifts, ensure adequate staffing, make work assignments, monitor the patient care work performed by CNAs and CMTs to ensure proper performance, issue oral warnings without prior approval and written warnings with prior approval, and conduct performance evaluations. However, that is not enough to make them supervisors. Overall, they do not possess sufficient supervisory authority in such combination and degree to make

---

<sup>4</sup> 146 LRRM 2321, 2322.

them supervisors. We are persuaded they are lead persons who spend most of their time doing patient care activities. We therefore conclude they are not supervisors.

### **DECISION**

It is the decision of the State Board of Mediation that the charge nurses at issue here are not supervisory employees. They are therefore included in the bargaining unit found appropriate.

The bargaining unit found appropriate is as follows:

**INCLUDED:** All full-time, regular part-time, and on call, hourly paid Cooks, Food Service Assistants, Housekeepers, Custodians, Laundry Assistants, Personal Laundry Assistant, Maintenance Worker, Beautician/Barber, Certified Nurse Assistants, Non-Certified Nurse Assistants, Certified Medical Technicians, Licensed Practical Nurse Charge Nurses, Graduate Practical Nurse Charge Nurse, Ward Clerk, and Restorative Certified Nurse Assistants, employed by the Lawrence County Nursing Home District at the Lawrence County Nursing Home and the Lawrence County Residential Care Center.

**EXCLUDED:** Administrator, Business Office Manager/Assistant Administrator, Administration Secretary/Receptionist, Social Services Designee, Assistant Social Services Designee, Food Service Supervisor, Housekeeping Supervisor, Laundry Supervisor, Maintenance Supervisor, Director of Nursing, Assistant Director of Nursing, Registered Nurse Certified Nurse Assistant Instructor, Registered Nurse Charge Nurses, Medical Records Technician, Restorative Nursing Supervisor, Restorative Activities Supervisor, Residential Care Center Restorative Activities Coordinator, other managers, supervisors, office clerical, professional, and technical employees, watchmen and guards, and all other employees.

### **DIRECTION OF ELECTION**

An election by secret ballot shall be conducted by the Chairman of the State Board of Mediation, or its designated representative, among the employees in the aforementioned bargaining unit, as early as possible, but not later than thirty days from the date below. The exact time and place will be set forth in the notice of election to be issued subsequently, subject to the Board's rules and regulations. Eligible to vote are those in the unit who were employed during the payroll period immediately preceding

the date below, including employees who did not work during the period because of vacation or illness. Ineligible to vote are those employees who quit or were discharged for cause since the designated payroll period and who have not been rehired or reinstated before the election. Those eligible to vote shall vote whether or not they desire to have Teamsters Local No. 245 as their exclusive bargaining representative.

It is hereby ordered that the Employer shall submit to the Chairman of the State Board of Mediation, as well as to the Union, within fourteen days from the date of this decision, as alphabetical list of names and addresses of employees in the aforementioned bargaining unit who were employed during the payroll period immediately preceding the date of this decision.

Signed this 27th day of August, 1994.

STATE BOARD OF MEDIATION

(SEAL)

/s/Francis R. Brady  
Francis R. Brady, Chairman

/s/ Joel Rosenblit  
Joel Rosenblit, Employee Member

/s/ Linda Cooper  
Linda Cooper, Employer Member